Supreme Court, U.S.
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No. 92-1249

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

AFRICAN-AMERICAN VOTING RIGHTS LEGAL DEFENSE FUND, INC., et al.

Appellants,

v.

ROY D. BLUNT, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI

MOTION OF APPELLEES STOFF AND WEEMS INTERVENORS TO DISMISS

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March 12, 1993

QUESTIONS PRESENTED

I. Whether the appeal should be dismissed for its failure to present argument in support of the questions presented.

II. Whether recent decisions by the Court determine the issues so as to require dismissal.

PARTIES TO PROCEEDINGS BELOW

Original parties before the three-judge district court: the African American Voting Rights Legal Defense Fund, Inc., Alvin Nash, Earl Pitts, Charles Troupe, Theodore Hoskins, and Ada Hill, the appellants herein; Missouri Secretary of State Roy Blunt and Missouri Governor John Ashcroft, appellees herein.

Intervenor defendants prior to trial: Melvin Weems, Myron Paris, John Lodwick, Jr., Jack Holland, Richard DeCoster, David Childers, and Sharon Carpenter ("Weems intervenors"), appellees herein; Thomas Stoff, Neil Molloy, Patrick Dougherty, Francis Brady, Henry Bufkins, Matt O'Neill, Gail Chatfield, Charles Dooley and Ron Auer ("Stoff intervenors"), appellees herein; Richard Dorsey, appellee herein.

Intervenor plaintiffs prior to trial: Paula Carter and Russell Goward, appellees herein.

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Appellees Stoff Intervenors and Weems Intervenors move the Court to dismiss this appeal because the questions presented by appellants are insubstantial.

STATUTORY PROVISION INVOLVED

In pertinent part, Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, provides that a violation is established if:

> (b) . . . based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

STATEMENT

The Missouri House of Representatives is comprised of legislators from 163 districts, nearly half of whom come from the major metropolitan areas of the state -- Kansas City, St. Louis County and St. Louis City. The Missouri constitution guides apportionment of all house districts, and those procedures, followed in 1991,

resulted in the final map challenged by appellants in this matter.

Shortly after an answer was filed, appellants and the appellees Governor Ashcroft and Secretary of State Blunt agreed to redraw the 1991 map and reach settlement. The settlement agreement specifically disclaimed that the 1991 map violated the Voting Rights Act. Prior to a hearing on the proposed settlement, the Stoff and Weems groups sought, and were granted, leave to intervene to defend the map. The three-judge court later ruled that it would not approve the settlement in the absence of proof that the 1991 plan violated federal law, and the matter was set for trial.

Appellants alleged that the 1991 house map presented a *per se* violation of the Voting Rights Act, 42 U.S.C. § 1973, because it did not contain as many majority-minority districts as could be drawn in the metropolitan areas. In addition, appellants argued that the map would cause retrogression, a reduction in the number of minority legislators, which was also alleged as a violation of the Act. The map would further dilute minority voting strength through packing and cracking, according to appellants. For relief, appellants sought an injunction and a declaration by the court that all future

reapportionment plans be precleared by the United States Attorney General or a three-judge panel of the District of Columbia court.

The trial court found that neither a failure to maximize nor retrogression was proof of a voting rights violation and turned its attention to determining if racially polarized voting usually defeated the minority preferred candidate. After finding that minority preferred candidates had a history of proportional representation in the metropolitan areas of the state, the Court held that appellants had failed to meet their burden of proof. This appeal followed.

ARGUMENT

1. THE CASE SHOULD BE DISMISSED BECAUSE THERE IS NO SUPPORT FOR THE QUESTIONS PRESENTED.

The appellants' jurisdictional statement contains no argument in support of the ten questions presented, leaving no indication as to why these questions are so substantial as to warrant further review by the Court.

Supreme Court rules require that jurisdictional statements follow the form for petitions for certiorari, including a "direct and concise argument amplifying the

reasons" review is sought. Sup.Ct.R. 14, 18.3. In the absence of that argument, the Court is without assistance in determining the importance of the case.

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

Sup.Ct.R. 14.5.

The rules and practices of the Court are designed to conserve scarce judicial resources, and the appellant must justify their expenditure rather than invoke them as a matter of right. Thus, although appellants' failure to argue seems based on the assumption that full briefing must later be granted,[1] the Court is free to determine this matter based solely on the jurisdictional statement. Sup.Ct.R. 18.10. Where appellant finds the issues so insubstantial as to forego argument, summary dismissal is appropriate.

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[1]For example, a notation to the table of authorities indicates that the cases "will be included in [a presumably later] brief." Juris. Statement 7.

2. THIS CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THE COURT.

The Court recently issued opinions in two cases which raised Voting Rights Act challenges to state apportionment maps. Those cases, *Voinovich v. Quilter*, 507 U.S. ____, 61 U.S.L.W. 4199 (March 2, 1993) and *Growe v. Emison*, 507 U.S. ____, 61 U.S.L.W. 4163 (Feb. 23, 1993), are dispositive on the majority of questions listed, but not argued, by appellants.

Under the holding of *Voinovich*, the creation of certain districts is neither required nor prohibited by the Act; rather, the question is whether, under the totality of the circumstances, the apportionment scheme "has the effect of diminishing or abridging the voting strength of the protected class." *Voinovich v. Quilter*, 507 U.S. at ____ (slip op. at 8, 9-10); *see also Growe v. Emison*, 507 U.S. at ____ (slip op. at 13-16) (absent proof of dilution, failure to include a super-majority minority district not violative of Act). Thus, appellants' primary contention presented in question seven, that the Act requires maximization of majority-minority voting districts, is without merit. *Id.*

Similarly, evidence of retrogression in the 1991 map (appellants' questions five, six, and nine), without a showing of dilution, will not establish a *per se* violation of

the Act. As outlined in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and reaffirmed in *Voinovich*, § 2 simply does not speak to the matter of particular electoral devices unless such devices result in unequal access to the electoral process. *Thornburg v. Gingles*, 478 U.S. at 46; *Voinovich v. Quilter*, 507 U.S. at ____ (slip op. at 7-8). Further, under precedent set by this Court, retrogression is a question relevant to determining violations of § 5, rather than § 2, of the Voting Rights Act. *See Beer v. United States*, 425 U.S. 130, 141 (1976); *Lockhart v. United States*, 460 U.S. 125, 134 n.10 (1983); and App. to Juris. Statement 20-22.[2]

This Court has repeatedly emphasized that reapportionment is a legislative matter inappropriate for the courts absent proof of a violation of federal law, holdings affirmed in both *Voinovich* and *Growe*. *See Voinovich v. Quilter*, 507 U.S. at ____ (slip op. at 9) (cases collected therein) and *Growe v. Emison*, 507 U.S. at ____ (slip op. at 8). Absent proof of dilution, federal courts must defer to the state, where primary responsibility for reapportionment rests. *Id.* Thus, the trial court was

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[2]Appellants' reproduction of the district court opinion misquotes the court on this subject. The opinion states, "However, retrogression is not determinative of a § 2 claim, but rather is determinative of a § 5 claim." App. to Juris. Statement 20 (emphasis added).

without authority to enter judgment on the settlement between appellants and state officials without proof that the 1991 map violated the Voting Rights Act. Further, the court would have been required to defer to Missouri law regarding reapportionment following any determination of illegality. *See* Mo. Const. art. III, § 2 (establishing apportionment commission and requiring reapportionment after the decennial census and after any judicial invalidation of prior apportionments). Appellants' questions on this issue, one and four, are distinctly answered by previous decisions of the Court.

Appellants challenge intervention by the Stoff and Weems groups in questions two and three. While they give no indication there as to how the trial court abused its discretion, the court itself found intervention necessary both to ensure adversity between the parties once the appellants and state appellees had reached settlement without establishing a violation of the Voting Rights Act, and to check the intrusion of partisan interests. *Order, Nash v. Blunt*, No. 91-0840 (W.D.Mo. Jan. 22, 1992). The court was well within it's discretion to grant intervention, "to ventilate a case that has all the earmarks of a cozy arrangement to suppress the facts." *NAACP v. New York*, 413 U.S. 345, 369-70 (1973) (Douglas, J., dissenting) (denial of intervention upheld as untimely).

3. APPELLANTS' FAILURE TO PROVE VOTE DILUTION, COMBINED WITH PROOF OF PROPORTIONAL REPRESENTATION, RENDERS THIS CASE SO FACT-BOUND AS TO BE UNWORTHY OF FURTHER ARGUMENT.

Appellants' burden of proof was clear:

> First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. . . Second, the minority group must be able to show that it is politically cohesive. . . [and] Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.

Thornburg v. Gingles, 478 U.S. at 50-51 (footnotes and citations omitted); *Voinovich v. Quilter*, 507 U.S. at ____ (slip op. at 10); *Growe v. Emison*, 507 U.S. at ____ (slip op. at 14). The first two issues were not seriously disputed below; testimony centered on the question of legally significant racially polarized voting. App. to Juris. Statement 35.

Primary support for appellants' arguments as to vote dilution came from Dr. Charlene Jones, a member of the House Reapportionment Commission who, despite her lack of training in statistics, was offered as an expert witness on the issue of racial bloc voting. Juris. Statement

20; App. to Juris. Statement 10. Dr. Jones, however, was unable to define "legally significant racially polarized voting" or "minority preferred candidate." Tr. at 411-15, 417-18. Thus, her conclusions on the matter were suspect.

Dr. Jones conducted no statistical analysis of voting behavior in Kansas City or St. Louis County, precluding a finding of dilution in those areas. *See Growe v. Emison*, 507 U.S. at ____ (slip op. at 15-16) (lack of statistical evidence ignored the *Gingles* preconditions and rendered them "unattainable"); *see also* App. to Juris. Statement 42. Further, when Dr. Jones did conduct a statistical analysis of voting patterns in St. Louis City, she used methods not recognized by this Court as "standard." *Thornburg v. Gingles*, 478 U.S. at 52-53 & n.20; App. to Juris. Statement 40 n.36. Given these shortcomings, the record fell far short of establishing minority vote dilution, and the district court so found.

In contrast, appellees successfully established a ten-year history of proportional representation in Kansas City, combined with a "near certain likelihood" that districts created there by the 1991 map would be effective minority voting districts in the future. App. to Juris. Statement 26-27. St. Louis City also has a history of proportional representation and the court was convinced that the

current districts would continue to be effective. App. to Juris. Statement 28-29. Appellees successfully showed a likelihood of proportional representation in St. Louis County, also. App. to Juris. Statement 35.

Together, establishment of the affirmative defenses and a failure of proof on the issue of minority vote dilution make this case fact-specific and inappropriate for further argument.

CONCLUSION

For all these reasons, the appellees Stoff and Weems intervenors respectfully submit that the appeal is so insubstantial as to need no further argument. Appellees respectfully move the Court to dismiss the appeal.

Respectfully submitted,

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